

# Law Office of Jack Silver

P.O. Box 5469 Santa Rosa, California 95402  
Phone 707-528-8175 Fax 707-528-8675  
lhm28843@sbcglobal.net



***Via Certified Mail***  
***Return Receipt Requested***

July 8, 2016

Patrick R. McKinney II  
Assistant Secretary/General Counsel  
Office of Legal Affairs  
California Dept. of Corrections and Rehabilitation  
P.O. Box 942883  
Sacramento, CA 94283-0001

Operations Manager/Site Manager  
California Men's Colony Wastewater Treatment Plant  
P.O. Box 8101  
San Luis Obispo, CA 93401

**Re: Notice of Violations and Intent to File Suit Under the Clean Water Act**

Dear Counsel McKinney, Operations Manager and/or Site Manager:

## **STATUTORY NOTICE**

This Notice is provided on behalf of California River Watch ("River Watch") with regard to violations of the Clean Water Act ("CWA" or "Act;" 33 U.S.C. § 1251 *et seq.*) that River Watch believes are occurring in the operation of the California Men's Colony Wastewater Treatment Plant ("Plant") and its associated collection system. River Watch hereby places the California Department of Corrections and Rehabilitation ("the Discharger") as the owner and operator of the Plant and its associated collection system, on notice that following the expiration of 60 days from receipt of this Notice by the Discharger, River Watch will be entitled under CWA § 505(a), 33 U.S.C. § 1365(a), to bring suit in the U.S. District Court against the Discharger for continuing violations of an effluent standard or limitation, permit condition or requirement, or a Federal or State Order or Permit issued under CWA § 402, 33 U.S.C. § 1342, and the Regional Water Quality Control Board, Central Coast Region, Water Quality Control Plan ("Basin Plan"), as the result of alleged violations

of permit conditions or limitations in the Discharger's National Pollutant Discharge Elimination System ("NPDES") Permit.

The CWA regulates the discharge of pollutants into navigable waters. The statute is structured in such a way that any discharge of pollutants is prohibited with the exception of enumerated statutory exceptions (*see* CWA § 301(a), 33 U.S.C. § 1311(a)). One such exception authorizes a discharger, who has been issued a permit pursuant to CWA § 402, 33 U.S.C. § 1342, to discharge designated pollutants at certain levels subject to certain conditions. The effluent discharge standards or limitations specified in a NPDES permit define the scope of the authorized exception to the CWA § 301(a), 33 U.S.C. § 1311(a) prohibition, such that violation of a NPDES permit limitation places a discharger in violation of the CWA.

The CWA provides that authority to administer the NPDES permitting system in any given state or region can be delegated by the Environmental Protection Agency ("EPA") to a state or to a regional regulatory agency, provided that the applicable state or regional regulatory scheme under which the local agency operates satisfies certain criteria (*see* CWA § 402(b), 33 U.S.C. § 1342(b)). In California, the EPA has granted authorization to a state regulatory apparatus comprised of the State Water Resources Control Board and several subsidiary regional water quality control boards to issue NPDES permits. The entity responsible for issuing NPDES permits and otherwise regulating the City's operations in the region at issue in this Notice is the Central Valley Regional Water Quality Control Board ("RWQCB-R3").

While delegating authority to administer the NPDES permitting system, the CWA provides that enforcement of the statute's permitting requirements relating to effluent standards or limitations imposed by the Regional Boards can be ensured by private parties acting under the citizen suit provision of the statute (*see* 33 U.S.C. § 1365). River Watch is exercising such citizen enforcement to enforce compliance by the City with its NPDES permit.

The CWA requires that any Notice regarding an alleged violation of an effluent standard or limitation or of an order with respect thereto, shall include sufficient information to permit the recipient to identify the following:

1. *The Specific Standard, Limitation, or Order Alleged to Have Been Violated*

River Watch identifies the Discharger's alleged violations of permit conditions or limitations set forth in RWQCB Order No. R3-2012-0027, NPDES No. CA0047856 (*Waste Discharge Requirements for California Department of Corrections and Rehabilitation*). A violation of an NPDES permit is a violation of the CWA. The Discharger is also a permittee

under the Statewide General Requirements for Sanitary Sewer Systems, Waste Discharge Requirements Order No. 2006-0003-DWQ ("Statewide WDR") governing the operation of sanitary sewer systems. Failure to comply with the Statewide WDR is a major cause of sewage system overflows.

## 2. *The Activity Alleged to Constitute a Violation*

Most often, the NPDES Permit standards and limitations being violated are self-explanatory, and an examination of the language of the NPDES Permit itself is sufficient to inform the Discharger of its failure to fully comply with permit requirements. This is especially so since the Discharger is responsible for monitoring its operations of the Plant and associated collection system to ensure compliance with all NPDES Permit conditions.

River Watch, however, sets forth the following narratives describing with particularity the activities it alleges as violations. River Watch does so following a review of public records, including the Discharger's Self Monitoring Reports for the Plant, regulatory enforcement orders relating to the Discharger's operations at the Plant, studies and planning documents prepared for the Discharger, and the Discharger's Sewer System Overflow Reports relating to the Plant and its associated sewage collection system. Additional records and other public documents in the Discharger's possession or otherwise available to the Discharger regarding its NPDES Permit (all of which are hereby incorporated by reference) may, upon discovery, reveal additional violations.

River Watch contends that from June 29, 2011 through June 29, 2016, the Discharger has violated the Act and the following identified requirements of its NPDES Permit with respect to its effluent discharge and the operation of its sewage collection system.

### A. Collection System Surface Discharges Caused By Sanitary Sewer Overflows

A Sanitary Sewer Overflow ("SSO") of a large volume, in which untreated sewage was discharged above ground from the Discharger's trunk line into a surface water prior to reaching the Plant, was reported by the Discharger in the Discharger's Interactive Public SSO Reports filed with the California Integrated Water Quality System ("CIWQS") web based information and data program and identified under ID #820279.

It was reported by the Discharger that on December 18, 2015 a spill of 78,000 gallons occurred at the location described in the Report as "CMC collection system/Camp Slo". An estimated 72,000 gallons were reported as reaching land, 58,000 gallons were recovered and 6,000 gallons were discharged into Chorro Creek -- a tributary of Morro Bay -- both waters of the United States. Water quality samples were reportedly analyzed for total and fecal coliform. No additional remedial measures were reported to evaluate the biological impacts

of the release of untreated sewage into Chorro Creek, which is CWA § 303(d) impaired for E. coli, fecal coliform, nutrients, and sediment/siltation.

The above described activity violated the following prohibitions of the Discharger's NPDES Permit:

Order No. R3-2012-0027, Discharge Prohibition III.C. - "The overflow or bypass of wastewater from the Discharger's collection, treatment, or disposal facilities and the subsequent discharge of untreated wastewater, except as provided for in Attachment D, Standard Provision I.G (Bypass), is prohibited."

Order No. R3-2012-0027, Discharge Prohibition III.D. - "Creation of a condition of pollution, contamination, or nuisance, as defined by Section 13050 of the CWC, is prohibited."

Order No. R3-2012-0027, Discharge Prohibition III.E. - "The discharge shall not cause or contribute to adverse impacts to beneficial uses of water or to threatened or endangered species and their habitat."

Order No. R3-2012-0027, Receiving Water Limitation V.A.4. - "Waters shall not contain suspended material in concentrations that cause nuisance or adversely affect beneficial uses."

Order No. R3-2012-0027, Receiving Water Limitation V.A.5. - "Waters shall not contain settleable material in concentrations that result in deposition of material that causes nuisance or adversely affects beneficial uses." (Since Chorro Creek is identified as impaired for sediment/siltation, any additional material discharged into the Creek along with the released wastewater is a violation.)

Order No. R3-2012-0027, Receiving Water Limitation V.A.7. - "Waters shall not contain biostimulatory substances in concentrations that promote aquatic growths to the extent that such growths cause nuisance or adversely affect beneficial uses." (Since Chorro Creek is identified as CWA § 303(d) impaired for E. coli, fecal coliform and nutrients, any discharge of raw sewage, which contains all 3 constituents in high concentrations, is most certainly a violation.)

#### Mitigating Impacts

River Watch contends the Discharger fails to adequately mitigate the impacts of SSOs. The Statewide WDR mandates that the permittee shall take all feasible steps to contain and mitigate the impacts of a SSO. The Discharger is a permittee under the Statewide WDR. The EPA's *"Report to Congress on the Impacts of SSOs"* identifies SSOs as a major source

of microbial pathogens and oxygen depleting substances. Numerous critical habitat areas exist within the areas of the Discharger's SSOs. River Watch finds no record of the Discharger performing any analysis of the impacts of the above referenced high volume SSO on critical habitat of protected species under the ESA, nor any evaluation of the measures needed to restore Chorro Creek from the impacts of SSOs. In the course of further discovery, River Watch will review the Discharger's Sewage System Management Plan, required under the Statewide WDR, to determine whether it is necessary for the Discharger to adopt additional protocols to address the impacts of SSOs from its sewage collection system.

**B. Receiving Water Violations**

From February 1, 2015 through April 5, 2016, the following itemized violations of limits in the Discharger's NPDES Permit on concentrations of constituents impacting surface water, i.e. Chorro Creek, were reported by the Discharger in its monthly self-monitoring reports filed with CIWQS. Many similar violations reported in prior years during the statutory period covered by this Notice were addressed in Administrative Civil Liability Order No. R3-2015-0001, with penalties assessed.

• **Total Dissolved Solids (TDS)**

**13** reported violations where concentrations of TDS exceeded limits set forth in the Discharger's NPDES Permit:

988322	(02/03/15)
988326	(02/03/15)
998292	(09/15/15)
998296	(09/15/15)
998795	(08/11/15)
998790	(07/21/15)
998792	(07/21/15)
998641	(06/09/15)
996749	(05/19/15)
999409	(10/06/15)
999405	(10/06/15)
1001400	(11/10/15)
1003515	(01/12/16)
1003510	(01/11/16)

- Sodium

**22** reported violations where concentrations of Sodium exceeded limits set forth in the Discharger's NPDES Permit:

988325	(02/03/15)
988323	(02/03/15)
996281	(05/19/15)
996752	(05/19/15)
998642	(06/09/15)
998638	(06/09/15)
998785	(07/21/15)
998784	(07/21/15)
998797	(08/11/15)
998796	(08/11/15)
998294	(09/15/15)
998293	(09/15/15)
999413	(10/06/15)
999410	(10/06/15)
1001399	(11/09/15)
1001397	(11/10/15)
1002212	(12/07/15)
1002207	(12/07/15)
1007797	(04/05/16)
1004984	(02/09/16)
1003516	(01/11/16)
1003514	(01/12/16)

- Chloride

**20** reported violations where concentrations of Chloride exceeded limits set forth in the Discharger's NPDES Permit:

988327	(02/03/15)
988324	(02/03/15)
990613	(03/04/15)
990611	(03/04/15)
996751	(05/19/15)
998650	(06/09/15)
998639	(06/09/15)
998789	(07/21/15)

998787	(07/21/15)
998803	(08/11/15)
998798	(08/11/15)
998290	(09/15/15)
998286	(09/15/15)
999414	(10/06/15)
999406	(10/06/15)
1001396	(11/10/15)
1002211	(12/07/15)
1002208	(12/07/15)
1003513	(01/12/16)
1003512	(01/11/16)

The above described are violations of the following prohibitions of the Discharger's NPDES Permit. Every violation of an NPDES permit is a violation of the CWA.

Order No. R3-2012-0027 V. RECEIVING WATER LIMITATIONS A. Surface Water Limitations

25. Discharges shall not cause receiving water to exceed the following water quality objectives specifically identified for the Chorro Creek sub-area (Estero Bay sub-basin) by Table 3-7 of the Basin Plan, shown below. Additionally, for TDS and sodium, effluent discharged shall not exceed the concentrations shown below, measured as a monthly maximum determined from monitoring stations not more than 200 feet upstream and downstream of the discharge.

Table 8. Salinity Water Quality Objectives

Parameter Units Annual[1]

TDS mg/L 500

Chloride mg/L 50

Sulfate mg/L 50

Boron mg/L 0.2

Sodium mg/L 50.

C. Effluent Limit Violations

From February 1, 2015 through April 5, 2016, the following violations of effluent limits set forth in the Discharger's NPDES Permit have been reported by the Discharger in its monthly self-monitoring reports to the CIWQS. Many similar violations reported in prior years during the statutory period covered by this Notice were addressed in Administrative Civil Liability Order No. R3-2015-0001, with penalties assessed.

- **Dibromochloromethane**

**2** reported violations where concentrations of Dibromochloromethane exceeded limits set forth in the Discharger's NPDES Permit:

991282      (04/07/15)  
991280      (04/30/15)

- **Dichlorobromomethane**

**2** reported violations where concentrations of Dichlorobromomethane exceeded limits set forth in the Discharger's NPDES Permit:

991284      (04/07/15)  
991281      (04/30/15)

- **Bis(2- Ethylhexyl)Phthalate**

**5** reported violations where concentrations of Bis(2- Ethylhexyl)Phthalate exceeded limits set forth in the Discharger's NPDES Permit:

998291      (09/30/15)  
998295      (09/16/15)  
999411      (10/07/15)  
999407      (10/31/15)  
1006752      (04/05/16)

The above listed exceedences of effluent limits are violations of the following provisions in the Discharger's NPDES Permit. Every violation of an NPDES permit is a violation of the CWA.

**Order No. R3-2012-0027 - IV. EFFLUENT LIMITATIONS AND DISCHARGE SPECIFICATIONS A. Effluent Limitations for Conventional and Non-Conventional Pollutants**

1. The Discharger shall maintain compliance with the following effluent limitations at Discharge Point No. 001, with compliance measured at Monitoring Location M-001 as described in the attached Monitoring and Reporting Program (MRP) (Attachment E).

**Table 6. Effluent Limitations**

Chlorodibromomethane Average Monthly  $\mu\text{g/L}$  0.40 , Maximum Daily 0.80  
Dichlorobromomethane - Average Monthly  $\mu\text{g/L}$  0.56 , Maximum Daily  $\mu\text{g/L}$  0.88  
Bis(2- Ethylhexyl)Phthalate- Average Monthly  $\mu\text{g/L}$  1.8 , Maximum Daily  $\mu\text{g/L}$  3.6.

3. *The Person or Persons Responsible for the Alleged Violation*

The entity responsible for the alleged violations identified in this Notice is the California Department of Corrections and Rehabilitation, referred to in this Notice as "Discharger," as well as those of the Discharger's employees responsible for compliance with the its NPDES Permit.

4. The Location of the Alleged Violations

The location or locations of the various violations are identified in the Discharger's NPDES Permit and also in records created and/or maintained by or for the Discharger which relate to the Plant, associated collection system, and the collection and disposal activities as described in this Notice.

The Discharger owns and operates a trunk sewer line and the Plant, located on Highway 1, North of San Luis Obispo, California. In addition to conveying and treating domestic wastewater from the East and West Facilities of the California Men's Colony, the trunk sewer and Plant provide wastewater conveyance and treatment for the California Army National Guard's Camp San Luis Obispo, Cuesta College, and several San Luis Obispo County facilities including the Education Center, the El Chorro Regional Park, Dairy Creek Golf Course, and the Operational Facility. All of these facilities, the wastewater from which is conveyed to the Plant for treatment and disposal, own and operate, and are individually responsible for, the operation of separate wastewater collection systems.

The Plant facilities include an influent pump station, aerated grit removal, two oxidation ditches, secondary clarification, tertiary filtration, and chlorination/dechlorination capability. The Plant has an average dry weather design flow of 1.2 MGD, with a peak dry weather flow of 2.4 MGD, and a peak wet weather flow of 5.2 MGD. Wastewater solids are dewatered by centrifuge and hauled from the site for disposal.

Treated wastewater is used by the County of San Luis Obispo to irrigate Dairy Creek Golf Course and are discharged to Chorro Creek at a minimum continuous flow rate of 0.75 cubic feet per second.

Pursuant to ACL Order No. R3-2015-0001, referenced above, the Discharger has agreed to fund a Supplemental Environmental Project (SEP) consisting of a study that evaluates the potential regionalization of the Plant by enhancing its treatment capacity and expanding the areas served to include the communities of Morro Bay and Cayucos Sanitary District.

The Basin Plan identifies the beneficial uses of Chorro Creek as including Municipal and Domestic Water Supply, Agricultural Supply, Groundwater Recharge, Water Contact Recreation, Non-Contact Water Recreation, Wildlife Habitat, Cold Fresh Water Habitat, Warm Fresh Water Habitat, Fish Migration, Fish Spawning, Preservation of Biological Habitats of Special Significance, Preservation of Rare and Endangered Species, Fresh Water Replenishment, and Commercial and Sport Fishing. River Watch is concerned that the Discharger is contemplating an expansion of its Plant and service area based on a study focused primarily on increasing hydraulic capacity while failing to consider the additional impacts of ongoing violations of surface water limits and effluent limits, as referenced above, on the affected beneficial uses of Chorro Creek.

5. The Date or Dates of Violation or a Reasonable Range of Dates During Which the Alleged Activity Occurred

River Watch has examined both RWQCB-R3 files and the Discharger's records with respect to the Plant, associated collection system and reclamation activities for the period from June 29, 2011 through June 29, 2016. The range of dates covered by this Notice is from June 29, 2011 through June 29, 2016. The violations specifically alleged in this Notice occurred during the period From February 1, 2015 through April 5, 2016. River Watch may from time to time update this Notice to include all violations of the CWA by the Discharger which occur during and after the range of dates currently covered.

6. The Full Name, Address, and Telephone Number of the Person Giving Notice

The entity giving Notice is California River Watch, referred to herein as "River Watch". River Watch is a 501(c)(3) non-profit, public benefit corporation organized under the laws of the State of California, with headquarters located in Sebastopol, California. Its mailing address is 290 S. Main Street, #817, Sebastopol, CA 95472.

River Watch is dedicated to protecting, enhancing, and helping to restore surface and ground waters of California including rivers, creeks, streams, wetlands, vernal pools, aquifers and associated environs, biota, flora and fauna, and educating the public concerning environmental issues associated with these environs.

River Watch may be contacted via email: [US@ncriverwatch.org](mailto:US@ncriverwatch.org) or through its attorneys. River Watch has retained legal counsel with respect to the issues set forth in this Notice. All communications should be directed as follows:

Jack Silver, Esquire  
Law Office of Jack Silver  
Jerry Bernhaut, Esquire  
P.O. Box 5469  
Santa Rosa, CA 95402  
Phone: 707-528-8175  
Email: lhm28843@sbcglobal.net

## **RECOMMENDED REMEDIAL MEASURES**

### **I. DEFINITIONS**

- A. Condition Assessment: A report that comprises inspection, rating, and evaluation of the existing condition of a sewer collection system. Inspection is based upon closed circuit television ("CCTV") inspections for gravity mains, manhole inspections for structural defects, and inspections of pipe connections at the manhole. After CCTV inspection occurs, pipe conditions are assigned a grade based on the Pipeline Assessment and Certification Program ("PACP") rating system, developed by the National Association of Sewer Service Companies. The PACP is a nationally recognized sewer pipeline condition rating system for CCTV inspections.
- B. Significantly Defective: A sewer pipe is considered to be Significantly Defective if its condition receives a grade of 4 or 5 based on the PACP rating system. The PACP assigns grades based on the significance of the defect, extent of damage, percentage of flow capacity restriction, and/or the amount of pipe wall loss due to deterioration. Grades are assigned as follows:
- 5 – Most significant defect
  - 4 – Significant defect
  - 3 - Moderate defect
  - 2 – Minor to moderate defect
  - 1 – Minor defect.

### **II. REMEDIAL MEASURES**

River Watch believes the following remedial measures are necessary to bring the Discharger into compliance with the CWA and the Basin Plan, and reflect the biological impacts of the Discharger's on-going noncompliance with the CWA:

**A. Sewage Collection System Investigation and Repair**

While the Discharger has reported relatively few SSOs from its wastewater collection system, the spill which occurred on December 18, 2015, CIWQS Event ID # 820279, was of major volume – 78,000 gallons by a rough estimation. The estimated amount reported as reaching Chorro Creek was 6,000 gallons based on a rough estimate of the flow to the Plant. River Watch believes the following commitment by the Discharger to condition assessment and repair of its sewage collection system is warranted.

1. Within two (2) years, the Condition Assessment of all sewer lines in the Discharger's sewage collection system.
2. Within two (2) years after completion of the Condition Assessment, the Discharger will:
  - i. Repair or replace all sewer pipe segments found to be Significantly Defective, i.e., receiving a rating of 4 or 5 in the PACP rating system;
  - ii. Repair or replace sewer pipe segments containing defects with a rating of 3 based on the PACP rating system, if such defect resulted in a SSO, or, if in the Discharger's discretion, such defects are in close proximity to Significantly Defective segments that are in the process of being repaired or replaced;
  - iii. Sewer pipe segments which contain defects with a rating of 3 that are not repaired or replaced within five (5) years after completion of the Condition Assessment are to be re-CCTV'd at least every five (5) years to ascertain the condition of the sewer line segment. If the Discharger determines the grade-3 sewer pipe segment has deteriorated and needs to be repaired or replaced, the Discharger shall complete such repair or replacement within two (2) years after the last CCTV cycle.
3. Provision in the Discharger's Capital Improvements Plan to implement a program of Condition Assessment of all sewer lines at least every five (5) years; said program to begin one (1) year following the Condition Assessment described above.

**B. SSO Reporting and Response**

1. Water quality sampling and testing to be required whenever it is estimated that fifty (50) gallons or more of untreated or partially treated wastewater enters

surface waters. Constituents tested for to include: Ammonia, Fecal Coliform, E. coli, phosphorous, nitrogen, sediment/siltation and a CAM-17 toxic metal analysis. The Discharger shall collect and test samples from three (3) locations: the point of discharge, upstream of the point of discharge, and downstream of the point of discharge. If any of said constituents are found at higher levels in the point of discharge sample and the downstream sample than in the upstream sample, the Discharger will determine and address the cause of the SSO that enters surface waters, and employ the following measures to prevent future overflows: (a) if the SSO is caused by a structural defect, then immediately spot repair the defect or replace the entire line; (b) if the defect is non-structural, such as a grease blockage or vandalism to a manhole cover, then perform additional maintenance or cleaning, and any other appropriate measures to fix the nonstructural defect.

2. Creation of website capacity to track information regarding SSOs; or in the alternative, the creation of a link from the Discharger's website to the CIWQS SSO Public Reports. Notification to be given by the Discharger to all customers and other members of the public of the existence of the web based program, including a commitment to respond to private parties submitting overflow reports.

C. Biological Assessment

The TMDL for nutrients and dissolved oxygen in Chorro Creek, the receiving water into which the Discharger discharges its effluent, establishes Waste load Allocations ("WLA") for the Discharger to achieve water quality objectives for dissolved oxygen and biostimulatory substances. The WLA's applicable to the Discharger and reflected in the Discharger's NPDES Permit include a limit of 50 mg/L as a monthly maximum concentration of sodium and a limit of 500 mg/L as a monthly maximum concentration of dissolved solids in receiving waters (Chorro Creek). As referenced above, the Discharger has experienced multiple violations of these permit limitations and such violations are likely to be ongoing.

Under ACL Order R3-2015-0001, the Discharger has agreed to fund a SEP to provide a capacity evaluation of the Plant to expand to provide treatment and disposal services for the communities of Morro Bay and Cayucos Sanitation District, in addition to the communities it already serves. The SEP scope of work is defined as identifying the upgrades needed to provide the additional capacity. Under the heading of "The assumptions for this project to include", are the following:

"The limits of the analysis will be conveyance of raw sewage to the treatment facilities and capacity of the treatment facilities on the current site and will not address capacity, cost, or layout of other off-site facilities. These facilities include, but are not limited to: Facilities necessary to expand reclamation in the CMC region. Pipelines and pump station(s) necessary to convey treated effluent from CMC to Morro Bay for reuse or disposal (i.e., existing MBCSD outfall).

**No permit or regulatory issues will be investigated or addressed. These include Basin Plan objectives or TMDL limits for Chorro Creek or other possible discharge locations, recharge capacity of Chorro Creek for downstream use, etc.**

The analysis will be based on the ability of the CMC facility to treat the combined influent of CMC, Morro Bay, and Cayucos Sanitary District to meet current water quality requirements (i.e. TDS, BOD, TSS, etc.). No groundwater hydrology analysis of Chorro Creek or geotechnical analysis of the existing WWTP site will be performed. No analysis of potential wastewater reclamation sites in the region will be completed" (emphasis added)

River Watch is concerned that the Discharger is contemplating expanding its facilities to serve a larger service area, based on a study focused primarily on increasing hydraulic capacity, without a commitment to investigate and make upgrades necessary to eliminate ongoing violations of surface water limits and effluent limits in the TMDL and its NPDES Permit. Nor has the Discharger made a commitment to perform a biological assessment to evaluate the impacts of its discharge on the beneficial uses of Chorro Creek.

In light of the above, River Watch requests the Discharger implement the following remedial measure: Within one year, the Discharger will contract with a registered Environmental Health Specialist or biologist to conduct a Biological Assessment of the impacts of its discharge on the beneficial uses of Chorro Creek, and to identify the remedial measures necessary to restore Chorro Creek to the biological condition necessary to fully support the Creek's beneficial uses as identified in the Basin Plan.

## **CONCLUSION**

The violations set forth in this Notice effect the health and enjoyment of members of River Watch who reside and recreate in the affected community. Members of River Watch may use the affected watershed for recreation, sports, fishing, swimming, hiking, photography, nature walks and the like. Their health, use, and enjoyment of this natural resource is specifically impaired by the Discharger's alleged violations of the CWA as set forth in this Notice.

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any "person", including a governmental instrumentality or agency, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), § 1362(5). An action for injunctive relief under the CWA is authorized by 33 U.S.C. § 1365(a). Violators of the Act are also subject to an assessment of civil penalties of up to \$37,500 per day/per violation for all violations pursuant to Sections 309(d) and 505 of the Act, 33 U.S.C. §§ 1319(d), 1365. *See also* 40 C.F.R. §§ 19.1 – 19.4. River Watch believes this Notice sufficiently states grounds for filing suit in federal court under the "citizen suit" provisions of CWA to obtain the relief provided for under the law.

The CWA specifically provides a 60-day "notice period" to promote resolution of disputes. River Watch strongly encourages the Discharger or its representative to contact River Watch within 20 days of receipt of this Notice to: (1) initiate a discussion regarding the allegations detailed in this Notice, and (2) set a date for a site visit. In the absence of productive discussions to resolve this dispute, or receipt of additional information demonstrating the Discharger is in compliance with the strict terms and conditions of its NPDES Permit and the CWA, River Watch intends to file a citizen's suit under CWA § 505(a) when the 60-day notice period ends.

Very truly yours,

  
Jerry Bernhaut

JB:lhbm

***Service List***

Administrator  
U.S. Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

✓ Regional Administrator  
U.S. Environmental Protection Agency Region 9  
75 Hawthorne St.  
San Francisco, CA 94105

Executive Director  
State Water Resources Control Board  
P.O. Box 100  
Sacramento, California 95812

Executive Officer  
Regional Water Quality Control Board  
Central Coast Region  
895 Aerovista Place, Suite 101  
San Luis Obispo, CA 93401-7906